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10/574,183

10/03/2006

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27367 7590 10/14/2009
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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

10/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/574,183 | Applicant(s) BADER ET AL. | |
| | Examiner ANN SCHILLINGER | Art Unit 3774 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) 5-12 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/30/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 13 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group II, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on 8/18/2009.

Applicant's election with traverse of the invention of Group I in the reply filed 8/18/2009, is acknowledged.

Though Applicant asserts that examination of all pending claims would not pose an undue burden on the Examiner, such is not an accurate assertion in light of the disparate nature of the presently claimed subject matter. Consideration of the plurality of inventions that Applicant has claimed would significantly compromise and preclude a quality examination on the merits. Furthermore, execution of a search encompassing the entirety of Applicant's claims would not only constitute an undue burden on the Examiner, but consideration of the findings of such a search in accordance with the requirements of the law under 35 U.S.C. §§101,102, 103 and 112 would be unduly onerous.

Moreover, it is further noted that a comprehensive search for the presently claimed subject matter is not solely limited to a search of the classes and subclasses in which they are classified. Therefore, it is obvious that a comprehensive search of the copious amounts of patent and non-patent literature for each of the patentably distinct inventions and their permutations presently claimed would necessarily place an undue burden on the Examiner.

Therefore, for the reasons above and those made of record in the Requirement for Restriction of 7/23/2009 is deemed proper and is made FINAL.

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Claim Objections

Claims 5-12 and 15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 4. See MPEP § 608.01(n). Accordingly, the claims 5-12 and 15 have not been further treated on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Otto et al. (US Pat. No. 6,290,727). Otto et al. discloses the following of claim 1: an acetabular liner for receiving a femoral head fixed on a stem component comprising: an outer surface (4); an inner surface (2) being concave and forming a cavity (col. 3, lines 38-45) adapted to receive the femoral head; and a rim (3) surface located circumferentially along the top edge of the liner and joining upper edges of the inner and outer surfaces (Fig. 3), the rim surface having at least one elevated portion (10) with a transitional area (21) at each end and at least one non-elevated portion (Figs. 2-3), the transitional area connecting a top surface of the elevated portion and the non-elevated portion of the rim surface, wherein at least a portion of the transitional area is concave for allowing an increased range of motion of the stem component relative to the acetabular liner (Fig. 3).

Otto et al. discloses the following of claim 2: an acetabular liner for receiving a femoral head fixed on a stem component comprising: an outer surface (4); an inner surface (2) being

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concave and forming a cavity (col. 3, lines 38-45) adapted to receive the femoral head of the stem component; and a rim surface (3) located circumferentially along the top edge of the liner and joining upper edges of the inner and outer surfaces, the rim surface having at least one elevated portion (10) and at least one non-elevated portion (Figs. 2-3), wherein the elevated portion forms approximately one third or less of the circumferential rim surface (Fig. 3).

Otto et al. discloses the following of claim 3: an acetabular liner for receiving a femoral head fixed on a stem component comprising: an outer surface (4); an inner surface (2) being concave and forming a cavity (col. 3, lines 38-45) adapted to receive the femoral head of the stem component; and a rim surface (3) located circumferentially along the top edge of the liner and joining upper edges of the inner and outer surfaces, the rim surface having at least one elevated portion (10) and at least one non-elevated portion (Figs. 2-3), the elevated portion having a concave inner surface (Fig. 3) that is a continuation of the inner surface of the cavity of the liner for containing the femoral head of the stem component in a snap fit (col. 1, lines 31-40).

Otto et al. discloses claim 4 as shown in Figures 2-3.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/DAVID ISABELLA/

Supervisory Patent Examiner, Art Unit 3774